

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,

Respondent,

vs.

DUWAINE EDWARD PRICE

DOB: 12/05/1968

APSIN ID: 6557835

DMV NO.: 6557835 AK

ATN: 116813124

Appellant.

Court of Appeals No. A-13834

Trial Court No. 3AN-17-10310CR

**AMENDED RESPONSE TO BAIL APPEAL**

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

**I. INTRODUCTION**

Duwayne Price has been charged with Murder in the Second Degree for the murder of Jerome Dillivan in November 1995. Bail is currently set at \$50,000 cash performance, \$150,000 cash appearance, and an approved third-party custodian. Price has attempted to modify his bail three times, and now appeals the court's denial of his request to modify his performance bond to \$10,000. Price argues that the trial court abused its discretion by not considering COVID-19 as a bail factor and thereby setting "excessive" bail. This Court should affirm the trial court's bail order because (1) the trial court properly weighed COVID-19 concerns and (2) the trial court reasonably set cash bail due to Price's extensive and violent criminal history.

II. FACTS AND PROCEEDINGS

Jerome Dillivan's severely beaten and shirtless body was found on November 21, 1995, outside the Texaco Station at 601 Muldoon Road.<sup>1</sup> Dillivan's friend told officers that he had dropped Dillivan off across the street at the 7-Eleven early that morning and that he saw two men approaching Dillivan.<sup>2</sup>

A 7-Eleven employee saw three men outside the store that morning: Dillivan, a short native man, and a tall man.<sup>3</sup> When she pretended to make a call, the men fled.<sup>4</sup> Thirty to forty minutes later, the tall man came inside and bought cigarettes.<sup>5</sup> He paid with three bloody dollar bills, and the clerk observed blood on his hands.<sup>6</sup> The shorter man came into the store and asked the tall man to buy matches.<sup>7</sup> This interaction is caught on video.<sup>8</sup>

Forensic testing established that the bloody dollar bills and matched the blood to Dillivan.<sup>9</sup> DNA from Browne Willard, the shorter man, was found on Dillivan's jacket.<sup>10</sup> Over a long investigation, Anchorage Police Department obtained independent tips that the

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<sup>1</sup> [App. III, 1 (this appendix includes documents containing information referenced by the parties and court during the proceedings)]

<sup>2</sup> [App. III, 9]

<sup>3</sup> [App. III, 2]

<sup>4</sup> [Id.]

<sup>5</sup> [Id.]

<sup>6</sup> [App. III, 3]

<sup>7</sup> [Id.]

<sup>8</sup> [App. III, 4]

<sup>9</sup> [App. III, 3]

<sup>10</sup> [App. III, 8]

1 taller man was Duwaine Price.<sup>11</sup> Anchorage Police Department also found corroboration  
2 that Willard and Price were together around the time of Dillivan's murder.<sup>12</sup>

3 The grand jury indicted Price and Willard for the murder of Jerome Dillivan on  
4 December 20, 2017.<sup>13</sup> The Superior Court imposed a bench warrant for \$250,000 cash  
5 performance, \$250,000 cash appearance, and a third-party custodian.<sup>14</sup>

6  
7 Price attempted to modify his bail three times.<sup>15</sup> On July 8, 2019, Price requested to  
8 reduce his cash bail to \$10,000 cash performance.<sup>16</sup> The court reduced bail to \$50,000 cash  
9 performance and \$150,000 cash appearance, pointing out that Price was a danger to the  
10 community due to his violent and extensive criminal history.<sup>17</sup> The court approved Jack  
11 Tripp as a third-party custodian.<sup>18</sup>

12  
13 On April 13, 2020, Price attempted to reduce his bail to \$5,000 cash performance,  
14 \$20,000 cash corporate, and \$100,000 unsecured appearance.<sup>19</sup> He argued that the COVID-  
15 19 pandemic warranted this change.<sup>20</sup> The court disagreed, ruling that Price was a danger  
16 to the community and that he gave no indication that he was particularly vulnerable to  
17 COVID-19.<sup>21</sup>

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21 <sup>11</sup> [App. III, 5, 7]

22 <sup>12</sup> [App. III, 6]

23 <sup>13</sup> [App. II]

24 <sup>14</sup> [Id.]

25 <sup>15</sup> [Id.]

26 <sup>16</sup> [Id.]

27 <sup>17</sup> [Id.]

<sup>18</sup> [Id.]

<sup>19</sup> [Id.]

<sup>20</sup> [Id.]

<sup>21</sup> [Id.]

On December 31, 2020, Price requested to reduce his performance bond to \$10,000, arguing that he had higher risk of contracting the virus (again).<sup>22</sup> On April 15, 2021, the court denied his request, finding again that he posed a risk to the community due to his concerning criminal history.<sup>23</sup> The court also noted that COVID-19 was not a relevant factor given that Price had already had the virus and could get the vaccine.<sup>24</sup>

Bail remains set at \$50,000 cash performance, \$150,000 cash appearance, and an approved third-party custodian. Price now requests that the court reduce his performance bond to \$10,000.<sup>25</sup> The State has been in contact with Dillivan’s family members, and they are strongly opposed to Price’s bail request.<sup>26</sup>

### III. STANDARD OF REVIEW

The appellate court “shall” affirm the trial court’s bail order unless it “finds that the lower court abused its discretion.”<sup>27</sup> This standard requires the appellate court to affirm the trial court’s decision unless the lower decision was “arbitrary, capricious, manifestly unreasonable, or stemmed from an improper motive.”<sup>28</sup> If the court finds an abuse of discretion, the court can “modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order.”<sup>29</sup>

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<sup>22</sup> [Exh. E to Bail Appeal]

<sup>23</sup> [App. I]

<sup>24</sup> [*Id.*]

<sup>25</sup> [Bail Appeal]

<sup>26</sup> [App. II]

<sup>27</sup> AS 12.30.030(a).

<sup>28</sup> *Wahl v. State*, 441 P.3d 424, 430 (Alaska 2019).

<sup>29</sup> AS 12.30.030(b).



**IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN PERMITTING PRICE PRE-TRIAL RELEASE UNDER REASONABLE CONDITIONS.**

Because Price is charged with an unclassified felony, Murder in the Second Degree, “there is a rebuttable presumption that there is a substantial risk that the person will not appear and the person poses a danger to the victim, other persons, or the community.”<sup>30</sup> In an independent bail review on July 8, 2019, the court found that cash bail was appropriately set at \$50,000 cash performance and \$150,000 cash appearance.<sup>31</sup> On April 13, 2020, the court applied the reasoning of *Karr v. State* to the case and found that bail was appropriate, the pandemic considered, due to the danger to community and the fact that Price was not especially susceptible to the virus.<sup>32</sup> On April 15, 2021, the court yet again affirmed the bail, finding that (1) Price could now meet with his attorney in person, (2) he was eligible for the vaccine and therefore less likely to contract the virus again, and (3) he could file a motion requesting a trial.<sup>33</sup> This Court should affirm the trial court’s bail determination because the trial court did not abuse its discretion by setting cash bail at \$50,000 cash performance and \$150,000 cash appearance.

**a. The trial court properly weighed COVID-19 concerns when setting Price’s bail conditions.**

In *Karr v. State*, this Court instructed judges to individually assess each case, considering the health risks to defendants and their flight risk given restricted travel

<sup>30</sup> AS 12.30.011(d)(2).

<sup>31</sup> [App. II]

<sup>32</sup> [Id.]

<sup>33</sup> [App. I]

1 conditions in Alaska and the rest of the world.<sup>34</sup> The trial court individually considered  
2 COVID concerns when setting Price's bail conditions, and did not abuse its discretion in  
3 concluding other concerns necessitate the current bail conditions

4 *i. The trial court properly considered that Price is at a reduced risk of*  
5 *contracting COVID-19.*

6 In March of 2020, the *Karr* court ordered courts to perform an individualized bail  
7 assessment of each defendant given COVID-19.<sup>35</sup> The trial court did just this and found  
8 that Price was not particularly at risk for COVID-19.<sup>36</sup> Presently, Price is not only not at  
9 an increased risk for COVID-19 but is actually less at risk than he may have been  
10 previously. He qualifies for the vaccine, which has enjoyed great success. He also has  
11 already had COVID-19, no evidence was adduced that his symptoms were severe or life-  
12 threatening, and reinfection is very rare.<sup>37</sup>

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15 In *Thomas v. State*,<sup>38</sup> the defendant argued the trial backlog "increase[ed] the pretrial  
16 detainee population and ma[de] it more likely that defendants in overcrowded facilities  
17 w[ould] contract the virus." This Court noted that the number of COVID-19 cases has  
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22 <sup>34</sup> 459 P.3d 1183, 1186 (Alaska App. 2020).

23 <sup>35</sup> *Id.*, at 1185.

24 <sup>36</sup> [App. II] For an example of what factors can make COVID-19 more dangerous to individuals,  
25 *see Wagner v. State*, No. A-13769, 2021 WL 1346286, at \*4 (Alaska Ct. App. Jan. 14, 2021).

26 <sup>37</sup> *See, e.g., Apoorva Mandavilli, Corona Reinfections Are Rare, Danish Researchers Report*, N.Y.  
27 TIMES (Mar. 21, 2021), <https://www.nytimes.com/2021/03/17/health/coronavirus-reinfections.html>. *See also Reinfection with COVID-19*,  
CTR. FOR DISEASE CONTROL (October 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html> (last visited June 29, 2021).

<sup>38</sup> *Thomas v. State*, No. A-13791, 2021 WL 1535772, at \*2 (Alaska Ct. App. Apr. 9, 2021).

1 “significantly declined” in 2021.<sup>39</sup> The court also found that widespread access to vaccines,  
2 particularly for inmates, had “changed the landscape.”<sup>40</sup>

3 Price is at low risk for contracting the virus and has access to a highly effective  
4 vaccine. Therefore, the trial court properly concluded that COVID-19’s hypothetical  
5 impact on Price is outweighed by other factors.  
6

7 *ii. The trial court properly considered the risk to the community given*  
8 *the slowing of COVID-19 and did not abuse its discretion by setting*  
9 *reasonable conditions of release for Price.*

10 Price argues that the risk to the community given the pandemic should be a factor  
11 considered in bail review.<sup>41</sup> In *Karr*, the court expressed that flight risk analysis may be  
12 different given the travel restrictions put into place in early 2020.<sup>42</sup> Travel conditions have  
13 changed since this court issued its decision in *Karr*. Currently travel restrictions have been  
14 lifted in most places, including every state in the United States, and people are able to travel  
15 almost anywhere in the world.<sup>43</sup> The CDC has stated that vaccinated individuals can “travel  
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20 <sup>39</sup> *Id.*, at \*3 (citing *Alaska COVID-19 Cases Dashboard*, [http://alaska-coronavirus-](http://alaska-coronavirus-vaccineoutreach-alaska-dhss.hub.arcgis.com/app/6a5932d709ef4ab1b868188a4c757b4f)  
21 [vaccineoutreach-alaska-dhss.hub.arcgis.com/app/6a5932d709ef4ab1b868188a4c757b4f](http://alaska-coronavirus-vaccineoutreach-alaska-dhss.hub.arcgis.com/app/6a5932d709ef4ab1b868188a4c757b4f) (last  
22 visited April 6, 2021)).

23 <sup>40</sup> *Id.*

24 <sup>41</sup> [Bail Appeal] It is unclear if the defense means that the community is at risk if COVID-19  
25 infections are higher in jails and therefore a risk to community health when they are released, or if  
26 the defense means that defendants are less of a risk to the community due to the pandemic’s impact  
27 on travel. If it is referring to the former, cases in Alaska have decreased significantly. *See COVID-*  
*19 (Coronavirus) Information*, STATE OF ALASKA, <https://covid19.alaska.gov/>. Currently, only  
twelve people in the whole state are hospitalized for COVID, and none of those cases are new. *Id.*

<sup>42</sup> 459 P.3d 1183, 1185 (Alaska App. 2020).

<sup>43</sup> *Travel Health Notices*, CDC (June 21, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notice.html>.

1 safely” throughout the United States.<sup>44</sup> Therefore, COVID related travel restrictions no  
2 longer significantly restrict a defendant’s ability to leave the state.

3 *iii. The trial court properly found that Price has full access to his attorney*  
4 *and therefore the issue raised by Price is moot.*

5 Price is free to meet with his attorney in jail. He argues that he still has limited  
6 access to his attorney given screening and mask requirements at the jails. It is unclear how  
7 temperature checks and masks would provide any barrier to attorney visitation in any case,  
8 much less Price’s. The trial court properly found that this factor was “moot” and should  
9 not be given any weight.<sup>45</sup> That is, the trial court considered Price’s claim and properly  
10 rejected it.  
11

12 Additionally, if Price is released, he will have potentially more difficulty contacting  
13 his attorney. Price’s third-party custodian lives and works in Juneau, while his attorney is  
14 based in Anchorage.<sup>46</sup> Price presently has full access to his attorney and this argument  
15 carries no weight.  
16

17 *iv. The trial court properly considered the trial backlog and the tolling*  
18 *of Rule 45 and did not abuse its discretion by setting reasonable*  
19 *conditions of release.*

20 Price argues that “the continued tolling of Rule 45 and backlog of trials” as a result  
21 of the pandemic renders the current bail punitive and excessive.<sup>47</sup> This backlog is  
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25 <sup>44</sup> *Domestic Travel During COVID-19*, CDC (June 10, 2021),  
<https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html>.

26 <sup>45</sup> [App. I]

27 <sup>46</sup> [App. II]

<sup>47</sup> [Bail Appeal]

frustrating to all parties involved in the criminal justice system, and all are doing their best to clear the backlog. However, the backlog is a result of something outside of the public and the State's control and is not a reason to overturn reasonable bail in favor of bail that could put the public at risk or frustrate the goals of the court. In order to ensure an "orderly transition and scheduling," bail must continue to ensure the presence of the defendant at trial.<sup>48</sup> The factors of A.S. § 12.30.011(c) still apply in the aftermath of a pandemic.

When determining bail, a court must consider:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the person;
- (3) the nature and extent of the person's family ties and relationships;
- (4) the person's employment status and history;
- (5) the length and character of the person's past and present residence;
- (6) the person's record of convictions and any pending criminal charges;
- (7) the person's record of appearance at court proceedings;
- (8) assets available to the person to meet monetary conditions of release;
- (9) the person's reputation, character, and mental condition;
- (10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;
- (11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community; and
- (12) the pretrial risk assessment provided by a pretrial services officer, if available.<sup>49</sup>

Notably, this extensive list does not include the length of time that a defendant may or may not spend in jail if he is unable to post bail. Although Price must abide by the rules

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<sup>48</sup> [App. I]

<sup>49</sup> A.S. § 12.30.011(c).

1 of the jail, his pre-trial confinement is not punitive in nature. Additionally, he will be  
2 entitled to time-served credit for the time that he spends in jail prior to trial.<sup>50</sup>

3 Lastly, it is unlikely that this case would have gone to trial in 2020 or will go to trial  
4 in 2021. This case is still in Discovery Hearing status with a motion pending in Price's co-  
5 defendant's case.<sup>51</sup> Thus, Price has failed to show that the COVID related trial backlog has  
6 caused his trial to be postponed.

8 **b. Price has not demonstrated how the trial court abused its discretion by**  
9 **setting cash bail at \$50,000 cash performance and \$150,000 cash**  
10 **appearance in a homicide case.**

11 Price argues that his monetary bail is punitive and excessive due to the delays caused  
12 by the pandemic and his inability to pay. Again, A.S. § 12.30.011(c) does not include the  
13 length of time that a defendant may or may not spend in jail if he is unable to post bail.

14 Price's inability to post the required bonds does not make his bail excessive. The  
15 "practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture  
16 serves as additional assurance of the presence of an accused" bail is "excessive" only when  
17 a court sets "a figure higher than an amount reasonably calculated to fulfill this purpose."<sup>52</sup>  
18 While a court should weigh a defendant's financial resources when determining bail, it is  
19 not a determinative factor.<sup>53</sup> A court may set cash bail higher than what the defendant can  
20 afford to pay.<sup>54</sup>

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25 <sup>50</sup> *Black v. State*, 569 P.2d 804, 806 (Alaska 1977) (citing A.S. § 11.05.040(a)).

26 <sup>51</sup> [App. II]

27 <sup>52</sup> *Stack v. Boyle*, 342 U.S. 1, 5 (1951).

<sup>53</sup> *Reeves v. State*, 411 P.2d 212, 215 (Alaska 1966).

<sup>54</sup> *Id.*

Price claims that the trial courts did not make any particularized findings regarding Price's bail amount. This is inaccurate. On July 8, 2019, the court found that Price had a history of violence and an extensive criminal record, which combined with his charge of Murder in the Second Degree, shows he poses a danger to the community.<sup>55</sup> On April 13, 2020, Judge Marston found again that Price poses a danger to the community, and noted that Price also did not have an increased risk of COVID-19. On April 15, 2021, the court found that no new information merited a change of reasonable bail, and that the dangers of COVID-19 had significantly lessened.<sup>56</sup> Simply put, the trial court has repeatedly concluded that the danger Price poses to the community outweighs COVID concerns in this case and necessitates the current bail conditions.

Price is charged with Murder in the Second Degree. The current \$50,000 cash performance and \$150,000 cash appearance are much lower than the originally set cash bail conditions. Community safety cannot be ensured if the current amounts are decreased, given the conduct underlying Price's current charge and his extensive and violent criminal history. The bail conditions are not "manifestly unreasonable."<sup>57</sup> Price has established no facts to indicate that the trial court abused its discretion when it affirmed this reasonable bail amount. Judges possess "wide latitude in imposing suitable [bail] conditions" after weighing the factors of A.S. § 12.30.011(c).<sup>58</sup>

<sup>55</sup> [App. II]

<sup>56</sup> [App. I]

<sup>57</sup> *Pisano v. State*, No. A-13549 (Alaska Ct. App. Jan. 31, 2020).

<sup>58</sup> *Martin v. State*, 517 P.2d 1389, 1398 (Alaska 1974).

Price claims that the evidence against him is insubstantial. But this claim misrepresents and omits the evidence against him. Price ignores that (1) he was seen on the scene with his co-defendant and the victim before the murder, (2) Price used money with the victim's blood on it to buy cigarettes, which was caught on video, (3) Price interacted with the co-defendant after the murder, which was also caught on video, and (4) many witnesses corroborated that Price was with his co-defendant around the time of the murder.<sup>59</sup>

The defense also claims that Price merely has a "moderately lengthy criminal history."<sup>60</sup> This is a gross understatement. Price has twenty convictions: three convictions for driving without a license or while his license was suspended; two convictions of disorderly conduct; two convictions of assault; and convictions of contempt of court, refusal to submit to a breathalyzer, reckless endangerment, violation of conditions of release, failure to stop at the direction of an officer, driving while intoxicated, theft in the third degree, and robbery in the first degree. Four of these convictions are felonies. This is not "moderately lengthy." Additionally, there are thirty-one years between Price's first conviction and his arrest in this case. In those thirty-one years, his numerous criminal convictions earned him a combined sentence of active jail time of more than thirty-three years. Notably, Price killed Dillivan soon after he finished serving a lengthy prison

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<sup>59</sup> [App. II]

<sup>60</sup> [Bail Appeal]



1 sentence.<sup>61</sup> In short, Price's criminal history evidences a protracted disregard for the need  
2 to conform his behavior to social norms, a refusal to obey the conditions of his release and  
3 law enforcement officers, and a willingness to engage in violence.

4 Price also argues that he is not facing any other criminal charges and that it has been  
5 a decade since his last felony conviction.<sup>62</sup> Price's last felony conviction was for Robbery  
6 in the First Degree. He was released from prison on June 11, 2017, and then was arraigned  
7 for Murder in the Second Degree on December 21, 2017. While Price's most recent  
8 conviction might have occurred 10 years ago, he was only released from confinement six  
9 months before he was indicted and arrested on the current charges.  
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12 Price also points out that he cannot pay his \$50,000 bail.<sup>63</sup> While ability to pay can  
13 be a factor, it is not a determinative factor.<sup>64</sup> The court does not have to set bail at an  
14 amount that the defendant can pay. Price's indigency must be weighed against the danger  
15 he poses to the community. Given the fact that he awaits trial for Murder in the Second  
16 Degree, his criminal history, and the totality of circumstances, \$50,000 appears to be  
17 extremely reasonable and low given Price's violent criminal history and his current charge.  
18

19 Lastly, Price argues that he has not threatened the victim's family or fled the state.  
20 Price and his co-defendant murdered Dillivan in 1995. For over twenty years, law  
21 enforcement did not know who had killed him. It would have been extremely foolish for  
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25 <sup>61</sup> Defendant was sentenced to ten years with two suspended in 1985. His probation was revoked  
26 in 1993, and he served the remaining two years until 1995. [App. II]

26 <sup>62</sup> [Bail Appeal]

26 <sup>63</sup> [Bail Appeal]

27 <sup>64</sup> *Reeves v. State*, 411 P.2d 212, 214–15 (Alaska 1966).

Price to send threats to the family who did not know his identity, and he had no reason to flee the state as he was not yet a suspect. Additionally, Price spent many of these years in prison. While in confinement Price had no opportunity to flee the state and threaten Dillivan's family. These facts do not weigh in favor of lower cash bail.

The trial court reasonably found that Price poses a danger to the community and properly imposed a \$50,000 cash performance bond and \$150,000 cash appearance, bond.

**V. CONCLUSION**

This Court should deny Price's bail appeal and affirm the trial court's ruling.

Dated at Anchorage Alaska, this 21 day of July, 2021.

TREG R. TAYLOR  
ATTORNEY GENERAL

By:



Daniel K Shorey  
Assistant District Attorney  
Alaska Bar No. 0311069

I certify that a copy of this pleading was  
Emailed on July 21, 2021, to:

Emily Cooper, OPA

A DILLEY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

DUWAIN PRICE,

Defendant.

Case No. 3AN-17-10310 CR

**ORDER DENYING REQUEST TO MODIFY PERFORMANCE BOND**

Before the court is Mr. Price's third bail review request. His second review was held on April 13, 2020 at the beginning on the Covid-19 pandemic pursuant to *Karr*<sup>1</sup>, and his current request stems from the length of the pandemic and the impacts it is having on defendants awaiting trial. There are three impacts that are important to this matter: (1) attorney-client visitation in jails, (2) risk of (re)infection, and (3) Rule 45 continuing to toll.

When Mr. Price filed this request, attorneys were prohibited from physically visiting their clients in jail. Since then, this restriction has been lifted.<sup>2</sup> Therefore, this issue is moot and is not given weight.

Mr. Price has been infected with Covid-19<sup>3</sup>, and he is eligible for the vaccine.<sup>4</sup> There is limited information on (1) how likely it is to be re-infected by Covid-19 and (2) how effective the vaccines are against emerging strains. However, the current

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<sup>1</sup> *Karr v. State*, 459 P.3d 1183 (Alaska App. 2020).

<sup>2</sup> As of April 7, 2021, in-person attorney-client visitation is permitted in all DOC institutions. See doc.alaska.gov.

<sup>3</sup> Memorandum in Support of Defendant's Bail Motion page 7.

<sup>4</sup> As of February 12, 2021, all staff and residents of congregated settings are eligible for the vaccine. Further, as of March 9, 2021, all Alaska residents age sixteen and older are eligible for the vaccine.

information shows some level of immunity exists in people that have already had the virus and/or received both doses of the Pfizer or Moderna vaccines.<sup>5</sup>

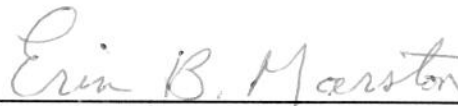
Pursuant to the most recent order of the Chief Justice,<sup>6</sup> Rule 45 will continue to toll until the Alaska Court System begins to clear the backlog of cases awaiting trial. Currently, jury trials for unclassified felonies are generally suspended until July 6, 2021. After July 31, 2021, Rule 45 will continue to be tolled as necessary to permit an orderly transition and scheduling. However, a party may request a jury trial during a period of general suspension by making a motion to the trial court. Should Mr. Price's case be ready for trial during this period, he is permitted to file a motion requesting his case be set for trial.

The new information provided by Mr. Price does not significantly change the weight the court has already given the twelve bail factors listed in AS 12.30.011 in favor of lowering bail to the requested amount. The current bail of \$50,000 cash performance, \$150,000 unsecured appearance, and a third-party custodian remains appropriate.

Therefore, Mr. Price's Request to Modify Performance Bond is Denied.

It is so Ordered.

DATED this 15<sup>th</sup> day of April 2021 in Anchorage, Alaska.

  
Erin B. Marston  
Superior Court Judge

<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-emerging-variants.html> (April 15, 2021).

<sup>6</sup> Chief Justice Order No. 8259 (April 6, 2021).

I certify that on 4/15/21  
of the following was mailed/ faxed/ hand delivered  
to each of the following at their addresses of  
record.

  
Kaitlyn Heulitt  
Administrative Assistant

Revised  
Cooper  
DA Park  
Appendix I  
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

DUWAINE EDWARD PRICE

DOB: 12/05/1968

APSIN ID: 6557835

DMV NO.: 6557835 AK

ATN: 116813124

Defendant.

Court No. 3AN-17-10310CR (Duwaine Edward Price)

**OPPOSITION TO DEFENDANT'S MOTION TO MODIFY PERFORMANCE  
BOND**

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The defendant has filed a motion to modify his current performance bond from \$50,000 cash performance to \$10,000 cash performance. The State opposes this motion. For the reasons set forth below, this court should deny the defendant's motion and should leave bail as set.

**FACTS**

On November 21, 1995, Jerome Dillivan's body was found lying face-up next to a semi-trailer behind the Texaco Station located at 601 Muldoon Road. Jerome Dillivan was shirtless and had been severely beaten. Dillivan's friend reported he dropped Dillivan off at the 7-Eleven, located across the street at 545 Muldoon Road, in the early morning hours

1 on November 21<sup>st</sup>. Dillivan's friend stated he saw two men approaching Dillivan as he was  
2 leaving.

3 The store clerk from the 7-Eleven reported there were three individuals hanging  
4 around the store that morning. The clerk described a man matching Dillivan's description.  
5 The clerk described the other two men as a short native male and a much taller man. The  
6 clerk stated that all three men took off when she pretended to make a phone call.  
7 Approximately 30 to 45 minutes later, the taller man entered the store to buy cigarettes.  
8 The clerk noticed his hands were bleeding and he paid with three-dollar bills that had blood  
9 on them. While the taller man was in the store, the short native male opened the door to the  
10 store and asked the taller man to get matches. Anchorage Police Department ("APD")  
11 collected surveillance video of this interaction.

12 APD also collected the dollar bills and submitted them to the State of Alaska Crime  
13 Detection Laboratory for analysis. DNA from the blood on the bills matched Dillivan.  
14 Dillivan's jacket was located and a DNA sample was collected. The DNA sample matched  
15 Browne Willard. Willard matched the description of the shorter native male.

16 Over the years, APD posted still images from the surveillance video to Crime  
17 Stoppers seeking any information. APD received tips that the taller man was Duwaine  
18 Price. Police reports from an unrelated incident put Willard and Price together close in time  
19 to Dillivan's death.

20 On December 20, 2017, a grand jury returned an indictment charging Price and  
21 Willard with Murder in the Second Degree. The Superior Court issued a warrant for  
22 \$250,000 cash appearance, \$250,000 cash performance, and a third party custodian.  
23

### **PRIOR BAIL HEARINGS**

On July 8, 2019, the court held a bail hearing in this matter. At that time, the defendant sought to reduce bail from \$250,000 cash appearance, \$250,000 cash performance and a third party custodian to \$10,000 cash performance and a third party custodian. The court approved Jack Tripp as a third party custodian and reduced bail to \$50,000 cash performance and \$150,000 unsecured cash appearance. The court noted that the defendant had a poor prior criminal record and a history of violence and found him to be a danger to the community.

On April 13, 2020, the court held a second bail hearing in this matter. At that hearing, the defendant argued because of COVID-19, the court should reduce the monetary bail to \$5,000 cash performance, \$20,000 cash or corporate appearance, and \$100,000 unsecured appearance. The court denied the bail request noting there was no evidence that the defendant was unusually susceptible to COVID-19 and that his danger to the community remained a concern.

### **CURRENT REQUEST**

The defendant has filed a third bail request arguing this court should, in essence, reconsider its last order and reduce bail from \$50,000 cash performance to \$10,000 cash performance because of the increase in positive COVID-19 cases and the continued length of the pandemic.

### **VICTIM STATEMENTS**

The state contacted the victims and provided them a copy of the defendant's bail motion. The victims expressed their objection to the defendant's proposal.

## ARGUMENT

The court should deny the defendant's request. At the July 8, 2019 bail hearing, the court performed an independent review of bail. Considering the factors in AS 12.30.011, the court found that bail was appropriate at \$50,000 cash performance, \$150,000 unsecured appearance, and a third party custodian.

Then, on April 13, 2020, the defendant asked the court to re-consider its previous bail order in light of the COVID-19 pandemic. The court applied *Karr v. State*<sup>1</sup> and declined to reduce bail, finding that the defendant's criminal history was concerning and that the defendant was a danger to the community. The court noted the defendant failed to provide any evidence to show he was unusually susceptible to COVID-19.

For a third time, the defendant comes before the court asking to reconsider its previous bail order because of the COVID-19 pandemic. Yet again, the defendant provides no information to show he will suffer symptoms that are more serious or that he is unusually susceptible to COVID-19. Rather, the defendant states that he has already contracted the COVID-19 virus. He has provided no evidence as to the severity of his symptoms or any evidence to suggest that if re-infected, his symptoms would be more severe. In fact, the defendant is at less of a risk as COVID-19 reinfection is rare.<sup>2</sup>

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<sup>1</sup> 459 P.3d 1183 (Alaska App. 2020)

<sup>2</sup> *Reinfection with COVID-19*, CTR. FOR DISEASE CONTROL (October 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html> (last visited January 22, 2021). *See also* Laith J Abu-Raddad et al., Assessment of the risk of SARS-CoV-2 reinfection in an intense re-exposure setting. *Clinical infectious diseases: an official publication of the Infectious*



1 The defendant also argues the length of the COVID-19 pandemic has affected his  
2 right to a trial and his ability to confer with his attorney in person. However, it is unlikely  
3 this case would have gone to trial in the past year or will go to trial in the coming year. The  
4 case is still in Discovery Hearing status with a motion pending in the co-defendant's case.  
5 Further, the defendant's release would still limit his ability to confer with his attorney in  
6 person. The defendant is required to be within 24/7 sight and sound of his third party  
7 custodian who owns a business and resides in Juneau. The defendant's attorney works in  
8 Anchorage. Meeting in person would require the defendant and his third party custodian,  
9 or the defendant's attorney, to travel back and forth, by plane, during a pandemic.

12 The court has already found that the defendant is a danger to the community and  
13 that his performance risk outweighed COVID-19 risks. The defendant has 20 prior  
14 convictions including felony convictions for burglary, sexual assault in the first degree,  
15 and robbery. The defendant's last conviction was in 2008. He was released from custody  
16 in June of 2017 and arrested on this offense in December of 2017. He was out of custody  
17 for six months before he was arrested on this offense.

22 *Diseases Society of America*, cial1846. (2020). Advance online publication.  
23 <https://doi.org/10.1093/cid/ciaa1846> (finding COVID-19 reinfection is a rare phenomenon);  
24 Ahmed Babiker et al., The Importance and Challenges of Identifying SARS-CoV-2  
25 Reinfections. *Journal of clinical microbiology*, JCM.02769-20. (2020). Advance online  
26 publication. <https://doi.org/10.1128/JCM.02769-20> (finding 75 percent of reinfection episodes  
27 were mild or asymptomatic and half of those patients had less severe symptoms than in their  
original infection).

1 The defendant argues his convictions are old or are factually minor in nature<sup>3</sup> and  
2 therefore, the court should not give his priors much weight. But consider this, according to  
3 APSIN, the defendant was convicted of sexual assault in the first degree and burglary in  
4 1985.<sup>4</sup> He was sentenced to ten years with two suspended. His probation was revoked in  
5 1993 and he was sentenced to serve the remaining two years.<sup>5</sup> Not much time passed  
6 between his release from custody and his murder of Jerome Dillivan. As the court noted at  
7 a prior bail hearing, it had the unique opportunity to observe the defendant's conduct after  
8 he committed a murder. After murdering Jerome Dillivan, the defendant went on to commit  
9 a number of crimes, ultimately being convicted of the following crimes: three separate  
10 convictions for driving without a license or while license suspended; two separate  
11 convictions of disorderly conduct; two separate convictions of assault; and a single  
12 conviction of contempt of court, refusal to submit to a breathalyzer, reckless endangerment,  
13 violation of conditions of release, failure to stop at the direction of an officer, driving while  
14 intoxicated, theft in the third degree, and robbery in the first degree.<sup>6</sup> 31 years have elapsed  
15 from the defendant's first adult conviction to his arrest in this case. During that time, the  
16  
17  
18  
19  
20

21  
22 <sup>3</sup> The defendant claims his robbery conviction was minor and did not result in injury to anyone but  
23 himself. However, a review of his APSIN shows he was convicted of Assault in the Fourth Degree  
24 – Recklessly Causing Injury in the same case. The defendant's statement and the conviction are at  
25 odds.

26 <sup>4</sup> Sealed Attachment 1.

27 <sup>5</sup> *Id.*

<sup>6</sup> *Id.*

1 defendant has received 20 convictions totaling a combined active jail time sentence of over  
2 33 years.<sup>7</sup> The defendant has spent his entire adulthood committed to a life of crime.

3 The court was correct when it declined to reduce bail on April 13, 2020 and should  
4 do so again. The COVID-19 pandemic is only part of the court's consideration. The court  
5 must continue to weigh the other factors. Here, the defendant remains a danger to the  
6 community and a performance risk. The changes in circumstances do not warrant a  
7 reduction in bail.  
8

9 Dated at Anchorage, Alaska, this 25<sup>th</sup> day of January, 2021.

10 ED SNIFFEN  
11 ATTORNEY GENERAL

12 This is to certify that on January 26, 2021 at  
13 11:21 AM the foregoing nine pages were  
14 delivered via email to the defense at [recipient's  
15 service email address] from [sender's email  
16 address]. The below authorized agent believe  
17 this transmission to be complete and without  
18 error.

19   
20 \_\_\_\_\_

21 1/26/21  
22 \_\_\_\_\_

23 By: \_\_\_\_\_

24 Sarah M. Park  
25 Assistant District Attorney  
26 Alaska Bar No. 1605037

27 <sup>7</sup> See *Id.* Obviously, with good time and parole, the defendant has served less than the actual time imposed.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

DUWAINE EDWARD PRICE

DOB: 12/05/1968

APSIN ID: 6557835

DMV NO.: 6557835 AK

ATN: 116813124

Defendant.

Court No. 3AN-17-10310CR (Duwaine Edward Price)

**ORDER**

This court, having considering arguments from both parties hereby DENIES the defendant's motion to reduce the performance bond. The defendant's bail remains as previously set.

Dated at Anchorage, Alaska, this \_\_\_\_ day of February, 2021.

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Erin Marston  
SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

DUWAINE EDWARD PRICE

DOB: 12/05/1968

APSIN ID: 6557835

DMV NO.: 6557835 AK

ATN: 116813124

Defendant.

Court No. 3AN-17-10310CR (Duwaine Edward Price)

**NOTICE OF FILING UNDERSEAL**

Enclosed is Attachment 1, filed in support of the State's Opposition to Defendant's Motion to Modify Performance Bond. The State files this attachment underseal.

6. The information in this affidavit is based on the affiants personal knowledge and or the observation of other officers and witnesses involved in this investigation, as reported to me either orally or via their written reports. Not all facts known to me are contained within this affidavit. Only those facts I believe relevant to the Courts probable cause determination are included.

7. The crime scene described in the search warrant will probable contain some of the evidence described in the search warrant and that any such evidence will aid in establishing the identity of the perpetrators(s) and the circumstance(s) under which the crime identified in the search warrant was committed. That such evidence requires a detailed and systematic search in order to locate, seize, record and process it.

Probable Cause Statement reference APD Case 95-209190

The following information is based upon the investigation conducted by this affidavit and stored under APD case #95-209190.

Detective M. Huelskoetter documented the following probable cause in an affidavit dated 01-29-2007.

8. At approximately 0722 hours on November 21, 1995 Leona Nickels found Dillivan's shirtless body lying face-up next to a 40-foot semi-trailer and called the police. The Anchorage Police Department responded and investigated the case as a homicide. Jerome Dillivan, age 25, was found dead at the Texaco station located at 601 Muldoon Street in Anchorage. According to the autopsy report completed by Dr. Michael T. Propst, Dillivan died from "Massive blunt force injuries, multiple." Currently, no person or persons have been arrested for this murder.

9. Evidence collected at the scene indicated Dillivan was the victim of a severe beating. There was evidence that the altercation began behind the 7-Eleven building located at 545 Muldoon Road, this evidence lead investigators to 601 Muldoon Road where there victim was found. The scene was processed for latent prints and other blood evidence.



10. Members of the crime scene team located and collected a partial palm print from the 40-foot trailer that was parked next to the Texaco station. The print appeared to be in blood, see Figure 1.

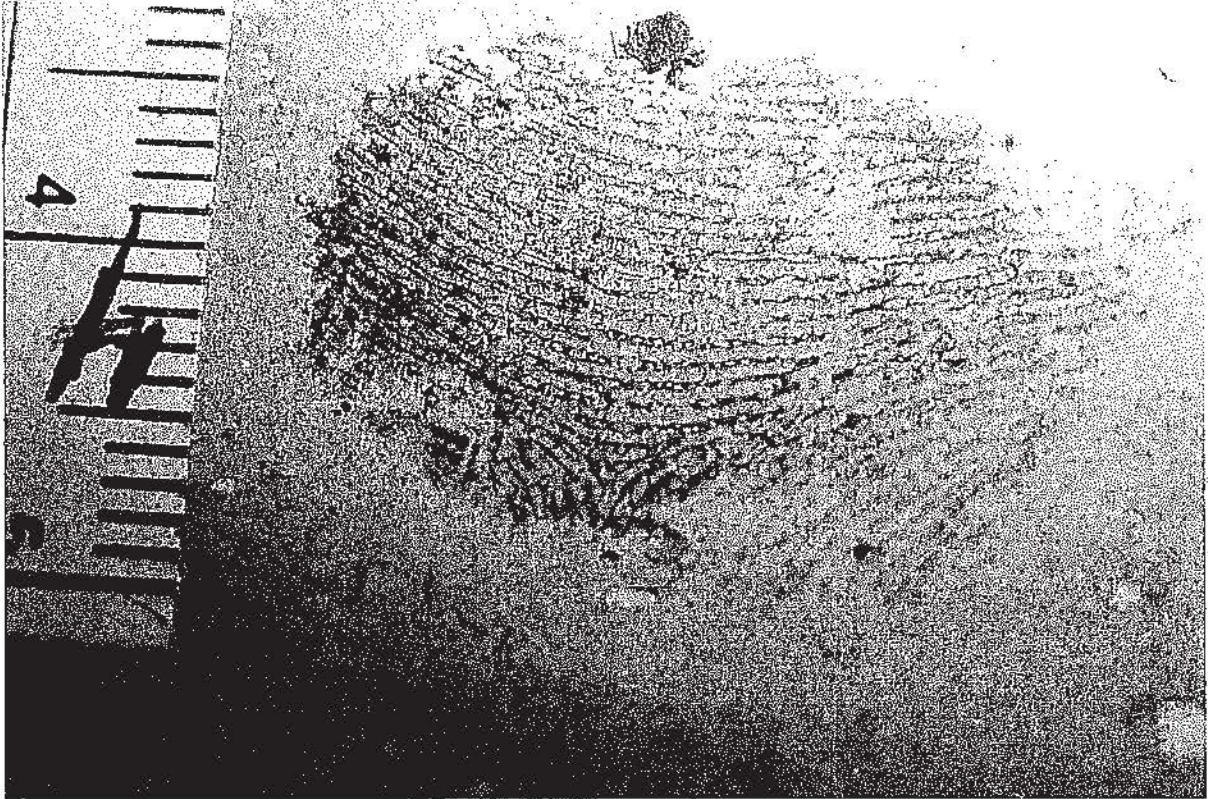


Figure 1

According to the Anchorage Police Department's former certified latent examiner, Charles Coleman, Dillivan's palm prints do not match the print in Figure 1.

11. Investigators questioned Shall Bailey, the night clerk from the 7-Eleven. Bailey told investigators about three suspicious individuals hanging around the store during the early morning hours of November 21<sup>st</sup>. She described one of the subjects as having long, red hair consistent with Dillivan's hair. Bailey described a short, native male, telling investigators he looked like someone who had been previously trespassed from her store. The third male was much taller and Bailey did not recognize him. Bailey told investigators that sometime around 1 a.m., the taller of those suspicious individuals came into the store and purchased a pack of cigarettes.

12. Bailey described the man (Subject #1) who paid for the cigarettes as having blood on his gloves and coat. He paid for the cigarettes with three, one-dollar bills that also had bloodstains on them. During Bailey's transaction with Subject #1, a second male (Subject #2) leaned in through the front doors reminding Subject #1 to be sure to get matches. Bailey said that upon completion of the transaction, Subject #1 left so much blood behind on the counter that she had to get a towel to clean up the mess.

13. Investigators collected those one-dollar bills, sending them to the State of Alaska Crime Detection Laboratory for analysis. No suitable latent prints were detected on the bills. The money tested positive for the presence of blood and DNA was isolated at the Crime Lab. The DNA isolated from the bills matched the sample of DNA from Dillivan.

14. Investigators seized the video tape from the surveillance cameras inside the 7-Eleven. The tape recorded the transaction described by Bailey and captured images of Subject #1. The video tape was processed by the State Crime Lab, by Forensic Scientist Jim Wolfe provided investigators with a series of still photographs acquired from the video tape. Investigators also determined that the time stamp on the video was approximately 1 hour fast. (See Figure 2 and Figure 3)





Figure 3

15. Some of the still images captured by the surveillance system have been used in several different Crime-Stoppers spots in the media over the last few years in an attempt to obtain investigative leads. Responses to the media coverage have led to several people being named as possible matches for Subject #1.

16. One tip, received November 21<sup>st</sup>, 2000 from an anonymous caller claimed that the person shown on T.V. looked like Duwayne Price. The tipster said that Price is in and out of jail all the time, is on probation and is on the State of Alaska Sex Offender Registry. The caller added that Price resides in Juneau.

17. Another tip came in via e-mail in 2003. Earl Lear, who worked at a halfway house in Juneau in 1997 and 1998 and became familiar with Duwayne Price. According to Lear, Price was incarcerated at the facility during a portion of time Lear worked there. Lear said Duwayne Price bears a striking resemblance to the photographs on the Anchorage Police Department's website (Figure 4), under the Unsolved Homicides link. Lear provided a link to Price's Sex Offender Registry information that included his photograph (Figure 5).



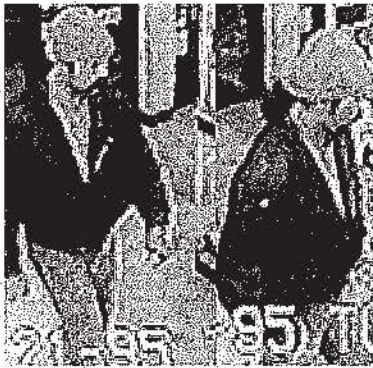


Figure 4

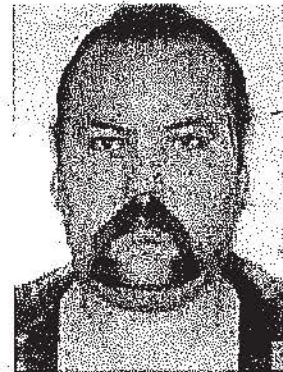


Figure 5

18. After a new Crime-Stoppers release was done in April 2005 Frank Standifer, an inmate in Cook Inlet Pre-Trial facility (CIPT) called in to report that he was sure that the subject in the Crime Stopper's story was Duwaine Price. On April 19, 2005, Detective Huelskoetter spoke to Standifer at CIPT. He told me that he was positive that Price was the person depicted in the photographs from the Crime-Stoppers media release. He said he knew it was Price because he and Price were incarcerated together several years earlier. Detective Huelskoetter showed him the series of still photographs produced by Jim Wolfe. Standifer said he believes that it is clearly Price. However, he was unable to identify Subject #2. Standifer said that he did not have any idea who Subject #2 could be.

19. Detective Huelskoetter requested a copy of Price's driver's license photo from as close to 1995 as possible. A copy was emailed to Detective Huelskoetter depicting Price from August 1995. See Figure #6.

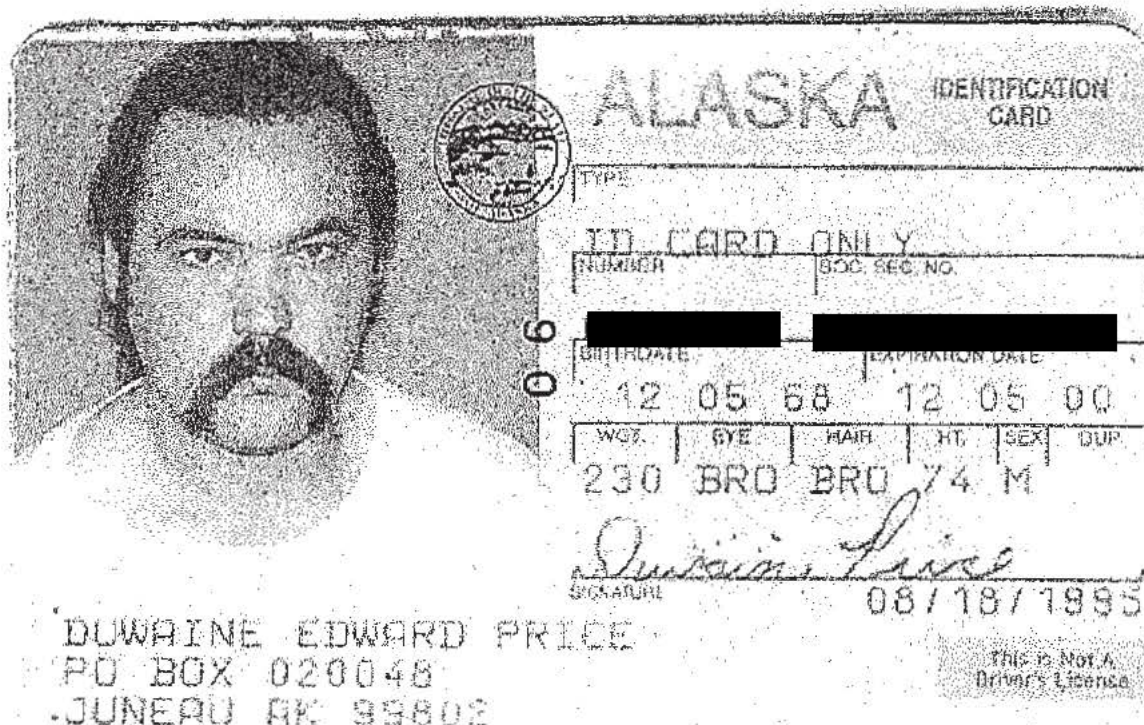


Figure 6

20. Detective Huelskoetter checked APD's database of reports from 1995 and found that Price was mentioned in a report of a disturbance taken November 18, 1995 (APD case number 95-207284). According to that report, a person named Browne Willard flagged down police officers in Spenard area of Anchorage. Willard told officers that 4 to 5 black males had assaulted him and his friend Price. In the report, Price and Willard told officers they were escorting a female to a trailer in the area to collect money owed to her when several black males assaulted them. According to Willard the female was dragged into a vehicle with the black males. Officers wrote in their reports that Price and Willard were acting suspicious and their stories did not match.

21. The officers contacted the female, who was with a black male in a vehicle nearby. The female indicated that there was not a problem and she refused to associate further with Price and Willard. The officers completed the report, documenting the unfounded nature of the call.

22. According to APD's database, there are no further contacts with Price or Willard in Anchorage. The Alaska Public Safety Information Network (APSIN) shows that both Price and Willard have extensive criminal histories from Juneau.



23. The Crime Stopper's information was released through various media outlets around the anniversary of the homicide in November 2006. Crime Stoppers received another tip indicating the person depicted in the photos was Duwaine Price. This time the tipster agreed to provide information directly to the investigating detective.

24. On December 21, 2006, Detective Huelskoetter interviewed Amber Landers, the tipster from Crime Stoppers. Landers told me that in 1997, she was involved in a romantic relationship with Price, aka "Moose". She said that Price was involved in the drug trade in Juneau with a person she knows as "Boom-Boom", aka Ray Evenson. Landers described Price as the muscle for the operation. She said that it would not surprise her if Price was responsible for the homicide based on his past history of beating people up. She said that she would be surprised if the person in the photograph was not Price.

25. APSIN information shows that Willard is a Native male, born 5-23-1973 and describes him as 5 feet 8 inches tall. Compared to Duwaine Price, a white male, born 12-5-1968 and is 6 feet 2 inches tall. Figure #3 depicts Subject #2 leaning into the store. In that photo it appears Subject #2 is noticeably shorter than Subject #1. It also shows that Subject #2 appears to have a dark complexion.

#### ADDITIONAL INFORMATION

26. According to APSIN Duwaine Price has the following criminal history:

CONV	CONV	CONVICTING	COURT
COURT DATE	CHARGE		DOCKET
SJU 08/17/01	DWI		1JU-S00-1593
SJU 08/17/01	FAIL TO STOP AT DIRECTION OF OFFIC		1JU-S00-1593
DJU 06/09/00	VIOLATE COND OF RELEASE IN CRIMINA		1JU-00-318
DJU 06/09/00	RECKLESS ENDANGERMENT		1JU-99-2051
DJU 04/22/99	DRIV WHILE LIC SUSP		99-286
DJU 01/09/98	DISORDERLY CONDUCT		1JU-97-2012
SJU 06/04/96	ASSAULT		96-244
SJU 06/04/96	REFUSE BREATHALYZER		96-244
DJU 03/26/96	DRIV W/O LICENSE		
DJU 03/11/96	CONCEALMNT OF MERCH		96-125
DJU 01/09/96	CONTEMPT OF COURT		95-22
DJU 01/09/96	DISORDERLY CONDUCT		96-41
DJU 01/12/95	DRIV W/O LICENSE		M9500022
DAN 05/08/91	DWI - ALCOHOL		M9006895
MPA 04/21/86	SEX ASSAULT 1- PENETRATE W/O CONSE		3PA-S85-2005
MPA 04/21/86	BURGLARY		85-2005

31. At about 1457 hours, Detective Huelskoetter went to the Lemon Creek Correctional Center and contacted Duwaine Price. Detective Huelskoetter read Price his rights as they pertain to Miranda and he declined to make a statement. Detective Huelskoetter executed the warrant and collected finger and palm prints from Price.

32. Detective Huelskoetter returned to Anchorage on the afternoon of January 31<sup>st</sup> 2007. On February 1<sup>st</sup>, 2007 Investigator Kovig informed Detective Huelskoetter that he had spoken to Sgt. Bruce Busby, who works for the Department of Corrections in Lemon Creek Correctional Center in Juneau. Sgt. Busby informed Investigator Kovig that he intercepted a phone call from Duwaine Price on the recorded jail phone system. The call occurred after Detective Huelskoetter departed the jail. Sgt. Busby told Investigator Kovig that the police would be very interested in hearing the conversation.

33. According to Investigator Kovig, the phone system in the place in the jail provides inmates warning that their calls may be subject to monitoring and recording.

34. As of 02-01-2007, Detective Huelskoetter wrote there hasn't been a comparison of the palm prints taken from Price or Willard to the latent prints taken from the scene.

35. On 02-01-2007, Detective Huelskoetter applied for and was granted Search Warrant 3AN-07-135 for the jail call referenced by Sgt. Kovig.

36. Detective Huelskoetter didn't report on his original affidavit, that on 01-03-2002, he requested several additional items of evidence, to include a black leather jacket tag#226238, be sent to the Alaska State Crime Lab for testing. On about 03-24-2004 the State of Alaska Crime Lab sent the results, for the above listed items, to Detective Huelskoetter. The document reported stains from the black leather jacket, tag#226238-2, had D.N.A. from more than one source. Genetic Typing results failed to exclude victim Jerome Dillivan as the source for this sample. The genetic profile obtained from this sample (unknown) has been entered into the Combined DNA Index System (C.O.D.I.S).

37. C.O.D.I.S. is a D.N.A. database that has the potential to offer investigative leads by locating a D.N.A. match between a crime scene sample and a convicted offender sampled in the database or cases previously thought to be unrelated.

38. On around 06-07-2017, Crime Scene Lead Detective Strahle received a C.O.D.I.S. "Hit" Letter in which the report documents the D.N.A. profile entered into C.O.D.I.S. for the stain on the leather jacket, tag#226238, and a sample submitted by offender Browne Willard (05-23-1973) was a match. This report was forwarded to me a few days later.





Service Since 1921

## Anchorage Police Department

Case Number: 95-209190

Type Crime:  
**HOMICIDE**

Statement of:

After they left the party, they took Jerry out to Muldoon because he wanted to see Tom. Tom lives in the trailer court, which is close to the 7-Eleven. Mike stated that Jerry wanted to buy drugs from Tom, and that he didn't want to go to Tom's trailer and so Jerry had Mike drop him at the 7-Eleven. When Jerry got out of the vehicle he grabbed four or five cans of Lucky Draft beer.

As he got out of the vehicle, there were two males standing in the parking lot and they spoke to Jerry. From their actions, Mike had the impression that these subjects knew Jerry and didn't really pay any other attention to it and drove out of the parking lot.

Later in the day when he saw the news and that someone had been killed at the Texaco, in one of the photos was a can, a bloody can of Lucky Draft beer and at that time he felt that the victim was probably Jerry because of the close proximity to the 7-Eleven.

He stated that when they dropped Jerry off, he was extremely intoxicated. Mike gave a description of the two subjects that he saw outside the 7-Eleven. He also agreed to show us where Gabe lives and where Tom lives.

SEE TAPED STATEMENT.

**END TAPE #1 SIDE A, BEGIN SIDE B**

**CONTINUED ACTION TAKEN:**

At 2130 hours on 11-21-95, Mike JONES directed DETECTIVE Larry AREND and myself to 705 Muldoon, Space 15 for Tom's trailer, the subject that

Appendix III

POTTER

580

11-2-95

CLR

Page 9 of 9 9/13/96 12

000130